

Internal Revenue Service
memorandum

CC:TL-N-5306-87

Brl:MLTorri

date: APR 29 1987

to: Deborah A. Butler
Special Trial Attorney, Southwest Region

CC:SW

from: Director, Tax Litigation Division

CC:TL

subject: [REDACTED]

This is in response to your request for technical advice, dated February 26, 1986, regarding the Service's positions on bid and proposal costs in light of the Tax Reform Act of 1986 and on the treatment of proceeds from the sale of leased assets which taxpayer had previously elected to depreciate under the Class Life Asset Depreciation Range system.

ISSUES

1. Whether, in light of Section 804 of the Tax Reform Act of 1986, the Service should continue to assert, in litigation, that the portion of progress payments received on contracts reported under the completed contract method attributable to bid and proposal costs should be currently accrued and included in income rather than deferred under the completed contract method of accounting. 0446.18-05; 0451.16-00; 0451.16-01.

2. Whether, in light of Honeywell, Inc. v. Commissioner, 87 T.C. 624 (1986), the Service will continue to litigate the position that, upon sale of a leased asset which the taxpayer previously elected to depreciate under the Class Life Asset Depreciation Range (CLADR) system, the proceeds from the sale must be currently reported as ordinary income rather than added to the depreciation reserve of the appropriate CLADR vintage account. 0167.01-02; 0167.02-02; 0167.25-00.

CONCLUSIONS

1. The Service has decided to concede the bid and proposal issue. Therefore, progress payments received as reimbursements for bid and proposal costs may be included by the taxpayer in the contract price of its long term contracts and thus deferred under the completed contract method of accounting.

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2. The Tax Litigation Division has taken the position that, until the CLADR regulations are amended so as to distinguish between the retirement of assets held by the taxpayer solely for lease and the sale of dual purpose assets, the proceeds from the sale of leased assets may be added to the depreciation reserve of the appropriate CLADR vintage account. A proposed Action on Decision is currently under review in which the Service would announce its acquiescence in result only in Honeywell, Inc. v. Commissioner.

DISCUSSION - ISSUE 1

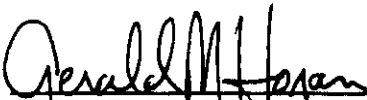
After discussions between the then Associate Chief Counsel (Technical), Pete Scott, and members of the staff of the Associate Chief Counsel (Litigation), the decision was made to concede the bid and proposal issue. We understand that this decision has already been conveyed to you.

DISCUSSION - ISSUE 2

The issue concerning the proper treatment of proceeds from the sale of leased assets which the taxpayer has previously elected to depreciate under the CLADR system is controlled by the Service's position regarding Honeywell, Inc. v. Commissioner, 87 T.C. 624 (1986). Attached is a draft Action on Decision in which it is proposed that the Service acquiesce in result only in the decision of the Tax Court in Honeywell. Although the Action on Decision has not yet been formally approved, it does represent the current position of the Tax Litigation Division. Therefore, consistent with the position taken in the proposed A.O.D., we recommend that the CLADR issue in the instant case be conceded.

ROBERT P. RUWE

By:



GERALD M. HORAN
Senior Technician Reviewer
Branch No. 1
Tax Litigation Division

Attachment:

Proposed A.O.D.